

June 11. 1766.

ADDITIONAL INFORMATION

F O R

Sir John Sinclair of Stevenson, Baronet, heir of tailzie and provision of the deceased Alexander Earl of Caithness, and claiming to be served as such before the macers,

A G A I N S T

Lady Dorothea Sinclair, Countess Fife, and James Earl Fife, her husband, for his interest.

A Deed of settlement executed by the late Lord Caithness Aug. 17. 1765 contained a procuratory for resigning the lands of Murkle, and others; "in favour, and for new
"infestment of the same; to be granted to himself,
"and the heirs-male of his body; which failing, to his brother, Mr Francis Sinclair, and the heirs-male of his body;
"which failing, to the second, third, and other younger
"sons successively to be procreated of the marriage between
"Lady Dorothea Sinclair, his daughter, and James Lord
"Macduff, and the heirs-male of their bodies; which failing,
"to the heirs-male to be procreated of the body of the
"said Lady Dorothea Sinclair, of any subsequent marriage;
"which failing, to George Sinclair of Woodhall, Esq; one
"of the Senators of the College of Justice, and the heirs-male
"of his body; which failing, to the said George Sinclair his
"nearest lawful heir-male of line whatsoever; which failing,

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“ to his (the Earl's) own nearest heirs and assignees whatsoever.”

Dec. 9. 1765. Upon Lord Caithness's death a competition of briefs arose betwixt Sir John Sinclair of Stevenson and the Countess Fife, severally claiming to be served heir of tailzie and provision to the Earl of Caithness, under the aforesaid deed of settlement. Sir John claimed as Lord Woodhall's nearest heir-male of line whatsoever; the Countess claimed as the Earl's nearest heir and assignee whatsoever.

The Lady's claim could only proceed, upon the supposition that the heirs called by the preceding clauses of the substitution had failed; and in that view she endeavoured by her counsel to render the clause under which Sir John claimed, of no effect; in general exclaiming against the irrationality of the deed; but more particularly contending, that the expression of *heir-male of line whatsoever*, was unknown in our law, and either altogether inexplicable, or at least unapplicable to the claimant Sir John Sinclair.

With regard to the irrationality, Sir John endeavoured to shew, that nothing more could be laid to the charge of this settlement than to almost every other settlement of a large estate, or an ancient family in Scotland: That the separate representation of a family was the genius of this country, and an idea acknowledged by all our lawyers: That no disrespect was here shewn to the Countess Fife; on the contrary, that her descendents were the *predilectæ personæ*, and that they became the undoubted proprietors of the estate, and representatives of Caithness, the hour she should produce an heir distinct from the representative of the family of Fife.

And laying aside vague and arbitrary questions as to rationality, which could with no propriety enter into the judgment of your Lordships, it was contended upon the merits of the question itself, That the expression of *heir-male of line whatsoever* was descriptive of a character of heir easily understood, and peculiarly applicable to the circumstances of Lord Woodhall's

hall's family and connections at the time the Earl of Caithness executed this deed in question. But although there had been any ambiguity in the expression, all doubt was removed by a variety of letters explanatory of and decisive with regard to my Lord Caithness's intention; some of those letters were produced, and a diligence was craved for exhibition of others.

The Lords Barjarg and Colston, assessors, took this debate to report; in the view of which informations were some time ago lodged with your Lordships; and, in the memorial on the part of Countess Fife, if nothing had been stated but what occurred in the debate before the macers, your Lordships would not have been troubled with this additional information; the intention of which is not to say one word in addition to what has already been said in behalf of the claimant Sir John Sinclair, except in so far as relates to the exhibition of letters of correspondence, which was one of the points taken to report.

The late Lord Woodhall was a gentleman well known to your Lordships; and it is believed, that there are few persons have preserved, to an advanced period of life, a more unsullied character than he always bore. If he had any failings, avarice and rapacity were of all others the grounds upon which his friends, and those who knew him best, would have least suspected any attack upon his character. However it so happens, that the counsel for Countess Fife have been instructed to lay against him a charge of diverting Lord Caithness, under frivolous pretences, from executing a settlement in favour of his own daughter, with the view of impetrating an unjust and irrational settlement in favour of himself.

Sir John Sinclair, both as nephew of the late Lord Woodhall, whom he greatly respected, and as the claimant under the settlement of the Earl of Caithness, has an undoubted title by every possible means to remove this imputation. As the nephew of Lord Woodhall, he is called upon to vindicate the honour and memory of his deceased friend and relation; and

as the heir of Lord Caithness, he has a clear interest to take care that his claim shall not be judged of under any false or undue impression.

In this view, he hopes now with additional force to claim an exhibition of all correspondence which will tend to give the most ample information with regard to the circumstances of that settlement under which he claims: He flatters himself, that his cause stands clear in his favour upon the words of the settlement, independent of every extraneous evidence; but since the advisers of the Countess have thought proper to deviate into such wanton abuse, in no degree relevantly connected with the cause as now before your Lordships, it will be hard indeed, if Sir John Sinclair should not be allowed to vindicate his friend, and support his interest, by the same means which have now been taken to attack the one, and to hurt the other.

For these reasons, Sir John will be forgiven, not only strenuously to insist upon the exhibition formerly demanded, but he must likewise be forgiven very considerably to enlarge the demand. Formerly he demanded only exhibition of those letters which were wrote by Lord Caithness about the time he executed the settlement, and therefore so far connected with the present question, as supposed to contain, in the clearest terms, a declaration of the views and intendment of his Lordship, in the execution of the settlement upon which the present competition has arisen: But now that the doers for the Countess Fife have made a very partial exhibition of some letters wrote by Lord Woodhall several years before the execution of the settlement in question, Sir John Sinclair hopes to be permitted a full inspection of Lord Woodhall's correspondence with Lord Caithness.

That the doers for Lady Fife are in a capacity to grant this demand, appears from the extract of the proceedings at the opening of Lord Caithness's repositories. It appears, that a large collection was there found, of which the doers for Lady Fife

Fife have possessed themselves: From these they have selected the very few founded upon in the Countess's memorial, from which the inference is endeavoured to be drawn, that Lord Woodhall had diverted Lord Caithness from the execution of his settlements in favour of his daughter.

Whether any thing more express, as to the reasons of my Lord Woodhall's desiring my Lord Caithness's presence at Edinburgh, before making his settlement, or whether the particulars he had to communicate from Lord Murkle, will appear further explained from those letters, must, from the nature of the thing, be perfectly unknown to Sir John Sinclair; but he hopes, that the circumstances of this case, and the manner in which the counsel for Lady Fife have been instructed to conduct their cause, afford most satisfactory reasons, why he should be indulged in the research. And this will appear still more reasonable, when your Lordships are informed of this circumstance, that Lord Woodhall, unsuspecting of this attack, did not take occasion to communicate these matters to any of his friends, and that Mr William Budge writer to the signet, whose character, it is believed, is known to several of your Lordships, the only other person present with and intrusted by Lord Murkle at his death, is also dead: So that all hopes of explanation are now at an end, except what may possibly arise from a full inspection of Lord Woodhall's letters to my Lord Caithness.

Sir John Sinclair however is hopeful, that, be the purport of those earlier letters as they will, there will be full materials for the vindication of Lord Woodhall's honour and integrity from the other parts of the exhibition which he now craves. It must at first view appear very singular to your Lordships, that, in a question arising upon a deed executed in the year 1761, the Countess should found so much upon letters wrote several years before that period, bearing no relation to the settlement afterwards made, while at the same time she contends strenuously against the exhibition of letters wrote

at the very time that the settlement in the 1761 was executed, relating expressly to that settlement, and explanatory of Lord Caithness's views in the execution of it.

Your Lordships have been already informed, that Lord Woodhall's letters to the Earl of Caithness are in the possession of the doers for Lady Fife, and therefore the particular strain of them are unknown to Sir John Sinclair; but if the exhibition shall be granted, he has the best reason to believe, that Lord Woodhall's conduct will appear in a very different light from what has been represented; and that, so far from using any improper methods to disappoint Lady Fife of Lord Murkle's fortune, he did, at the very time when the present entail was about being executed, expostulate strongly with the Earl of Caithness to settle her uncle's succession upon Lady Fife, and even represented against any part of the estate going out of the natural channel of descent; and he desisted only from these remonstrances upon discovering Lord Caithness's steady and determined purpose to execute his settlements in the form that he did, and that if Lord Woodhall would not agree to be his representative, another would be substituted in his place.

Lord Caithness's reasons for adopting this plan of settlement, will in a particular manner appear, if Sir John Sinclair is not greatly misinformed, if exhibition is granted of those letters which now lie sealed in the custody of Mr Robert Sinclair. Whatever may have been Lord Caithness's intention about the time of Lord Murkle's death, when Lady Fife was as yet unmarried, from those letters Sir John has the best reason to believe it will appear, that after her marriage, when Lord Caithness thought he had ground to fear that there would be no issue of the marriage, he then formed the plan which he has since carried into execution, he determined to establish a new representation of his family, being dissatisfied with the claims of all those who pretended to be the heirs of his honours and estate. In this new
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plan he has reserved the right of his daughter's descendants, if any such should appear; and failing these, he cast his eyes upon a family, which he on every occasion declared was the only one of the name which had shown him any degree of friendship or regard; and which Sir John Sinclair will be pardoned to say, is a family which hitherto has been treated by the world with as much respect, in proportion to its rank, as any other whatsoever.

These are the material facts which Sir John Sinclair flatters himself will be instructed by the exhibition he now craves, if your Lordships shall indulge him in the request; and to these Sir John will presume to add another in support of the demand he makes for the exhibition of the letters wrote by the Earl of Caithness. The counsel for Lady Fife have been instructed to represent her father, as in some measure bereft of his understanding and judgment at the time he executed the settlement 1761. How far there was the least foundation for this representation of Lord Caithness's faculties at a time even posterior to the execution of the settlement, your Lordships will be able to judge from those letters of a later date, subjoined to the former information for Sir John. But the evidence upon this point will be more complete, if you shall likewise have before you the letters wrote about the very time of the settlement, especially those letters where he explains the views and motives of the settlement which he executed.

Since there has been occasion to make mention of what personally concerns the Earl of Caithness, there is a degree of indelicacy running through almost every line of the Countess's memorial, which cannot escape notice. Sir John does not mean to insinuate any thing against that Lady herself: She is possessed of too many amiable qualities to have so far forgot that respect which is due to the memory of a father; and there is as little room to imagine that any improprieties of this kind will be countenanced by the Noble Lord her husband. But most certainly those who have instructed the

the counsel to frame the memorial for Countess Fife, have forgot they were writing in name of Lord Caithness's daughter, or they would never have accused him, not only of *playing the politician*, but of doing what *no good man* would have done. These things, even although they had been true, ought not to have dropped from the mouth of a daughter.

The letter of the 7th of June 1764, seems to have given the greatest offence. From this letter, indeed, it would appear, that Lord Caithness was desirous to conceal the nature of his settlements, as your Lordships know is very commonly the case with persons who may dread being teased, in order to make an alteration of those settlements. Sir John is persuaded, that there was no danger of any undue solicitations of this kind, either from the Lady Fife or her husband's connections. But if Lord Caithness dreaded any thing of this kind, and took the methods which occurred to him the best to prevent it, this scarcely seems provocation sufficient to draw down so severe animadversions from his own daughter.

It is only necessary further to trouble your Lordships, in order to correct a mistake in point of fact. It is not material; but Mr Pringle, who wrote this settlement, was neither a relation nor the ordinary doer of the family of Stevenson, as set forth in the memorial for Lady Fife: and this mistake could scarcely have been fallen into, if they had recollected that Mr Peter Sinclair at this time was alive, who undoubtedly did business for the family of Stevenson. If Lord Caithness did not employ Mr Davidson, or any other person, who was his ordinary doer, it is not improbable that this may have proceeded from the same over-anxiety of concealment which has already been mentioned.

In respect whereof, &c.

HENRY DUNDAS.